IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 758 OF 2006

Mayashankar R. Singh .. Petitioner.

vs.

Brihanmumbai Municipal

Corporation & Ors. .. Respondents.

Mr. A.C. Singh a/w D.R. Shah

for petitioners.

Mr. Vinod Mahadik for respondents.

CORAM : S.U. KAMDAR, J.

DATE : 22nd March, 2006.

P.C.:

. The present petition is filed challenging the order dated 8.11.2005 passed by the Corporation deregistering the petitioner for the period of three years from 18.2.2005 to 17.2.2008 in all the categories of registration. Some of the material facts of the present case briefly enumerated are as under :

2. The petitioner is a registered contractor with the Corporation and thus entitled to

participate in tenders which are floated from time to time by the Corporation. In respect of the contact for P/L 150 mm, 250 mm and 300 mm dia water mains at various places in K/East Ward public tenders were floated by the respondent Corporation. The petitioner was one of the tenderers. His tender was found to be the lowest. Therefore his tender was accepted and work order issued on 11/5/2004 fixing the date of commencement of work as 1.10.2004. The time period for completion of the work was seven months therefrom. There is no dispute that the petitioner did not commence and execute any work in respect of the said tender. However, he demanded revision in the rate for the purpose of execution of the said contract. He did not take any steps of even giving a contract deposit. On 22.7.2004 and 9.11.2004 the petitioner was reminded to commence the work. However, till the issuance of the show cause notice no work was carried out nor any steps were taken to commence the work. Ultimately on 15.3.2005 the authorities proposed to take action against the petitioner under clause 1.7 (f) and 1.28 of the tender document as well as under clause clause 9.1.3 (x) of circular No. EECIVIL/2328/Mon & Reg dated 22.11.2000. To the said show cause notice the petitioner replied vide his letter dated 25.3.2005 and on the reply being received an order came to be passed on 7.5.2005 inter alia holding the petitioner guilty of

the non-execution of the contract. It has been observed in the said order that the contractor had submitted the offer and the same was opened in his presence and the offer was accepted. However the contractor refused to execute the contract and sought to withdraw from the contract. In terms of clause 1.7. (f) and 1.28 of the tender document as well as under clause 9.1.3 (x) of the circular dated 22.11.2000 the action was taken for de-registering the petitioner for the period of three years from 18.2.2005 to 17.2.2008 in all the categories of registration.

3. The petitioner preferred a writ petition against the said order. The said writ petition was heard by the Court and by an order dated 18.5.2005 passed in Writ Petition (Lodging) No. 1394 of 2005 the Corporation was directed to give hearing to the petitioner. Pursuant thereto the hearing was offered to the petitioner and the City Engineer heard the petitioner. After hearing the petitioner, the City Engineer has given his recommendations dated 8.6.2005 inter alia holding that the petitioner is guilty of breach of clauses 1.7 (f) and 1.28 as well as the said circular and the action on the part of the Corporation to deregister the petitioner is correct in law. However, he was of the opinion that the period of three years must be reconsidered by the Committee. The matter was

thereafter placed before the Registration Committee and the Registration Committee on 20.7.2005 considered the said recommendation of the City Engineer who was also the Secretary of the Registration Committee and after considering the said recommendations of the City Engineer felt that there was no case made out for reconsideration of the penalty imposed and maintained the order originally passed on 8.6.2005. The said order dated 8.6.2005 has been challenged by the petitioner by filing the present writ petition.

4. Firstly it has been contended by the learned counsel for the petitioners that the Corporation has no power to deregister a contractor who is guilty of non-execution of any work under the contract awarded to him. The learned counsel for the petitioner has taken me through the circular as well as the tender terms and conditions. It was his contention that under Rule 9.1.3 which provides for deregistration it provides only in certain cases such as where the work carried out is of an inferior quality and other serious cases and not any case of non-eecution of contract. It is his case that rule 9.1.3 for deregistration does not include the case of the petitioner where there is a charge of non-execution of a particular contract. He has further contended that the only remedy available for the Corporation is to forfeit the earnest money deposited in

accordance with the clause of the tender terms 1.7 (f) and there is no power in the Corporation to deregister the petitioner herein.

5. I have considered the aforesaid submissions of the learned counsel for the petitioner and I am not able to accept the same. Firstly, because clause 1.7 (f) and 1.28 are the two clauses under which the action was proposed under the show cause notice and ultimately the action was taken under the said clauses over and above the circular clause 9.1.3 (x). Under clause 1.28 there is an express power conferred on the Corporation to disqualify the tenderer from awarding any work with the Corporation. In that light of the matter, the contention that there is no power in the Corporation cannot be accepted. In so far the circular is concerned, in my opinion even the circular covers the case of the petitioner. Under clause 9.1.2 of the said circular which inter alia provides for demotion of the contractor contemplates the cases where there is failure or default in execution of individual works, by the contractor apart from other various contingencies provided therein. These class of cases are provided for demotion and not for deregistration but by virtue of the provisions of clause (x) of clause 9.1.3 it has been specifically provided that this ground will also be available in the case where the Corporation feels that there is a

serious breach of terms and conditions of the contract document as contemplated under clause 9.1.2. The said clauses 1.7.(f), 1.28 of the tender and clause 9.1.2 and clause 9.1.3 (x) of the said circular reads as under :-

> "1.7 (f) If successful tendered fails to sign the agreement and furnish contract deposit within 30 calendar days after receiving notice of the award of contract, the EMD may be forfeited or penalty of Rs. 100/- per day will be recovered and the tenderer may be disqualified from tendering for any work with the Corporation and work under reference will be carried out at his risk and cost, treating this clause as notice;
>
> "1.28 Signing of the Contract :
> Within 30 days of receipt of Notification of award (Letter of Acceptance) the successful tenderer shall sign the form of Agreement along with all documents required for execution of contract & shall require to execute the contract & also shall furnish the required Contract Deposit (5% of the Contract Sum). Failing which the Tenderers E.M.D. may be forfeited and the tenderer, may be disqualified from tendering any work

with the Corporation. Also contractors will be liable to pay Rs. 100/- per day as a penalty from expiry of One month from receipt of the Notification Award, till they submit all required documents to the satisfaction of Engineer/C.A. (W.S.S.D.) required for execution of contract.

9.1.2 A contractor will be liable to be demoted to a lower class of registration on any of the following grounds.

(i) specific failure or default in execution of individual works, in respect of physical progress or quality of such works;

(ii) inadequate performance as revealed by quarterly performance report (pg 34);

(iii) deterioration in financial or technical ability/capacity; and

(iv) repeated failure to fill in tender documents fully and correctly or delay in execution of formal contract documents."

9.1.3 (x) Any of the grounds mentioned in clause 9.1.2 if it is deemed serious enough."

In my opinion the combined reading of clauses 1.7.(f), 1.28, clause 9.1.2 and clause 9.1.3 (x) of the said circular leads to an irresistible conclusion that the Corporation has power to deregister the petitioner who failed to do the work in accordance with the work order issued to him pursuance to his submission of any particular tender. In the present case there is no dispute that the petitioner has failed to execute the work in accordance with the terms and conditions of the tender which he had submitted and whose offer has been accepted. It is also not in dispute that the work order was also issued. In the light of matter sufficient grounds are made out for the purpose of taking action by the Corporation under the provisions of the terms and conditions of the tender documents as well as the circulars which are providing guide-lines in case where action should be initiated for the purpose of deregistration of the contractor. In that light of the matter, the submission of the learned counsel for the petitioner that there is no power in the Corporation to deregister the contractor on the basis of non-execution of work has to be rejected.

6. The next contention which has been advanced by the learned counsel for the petitioner is that the hearing was given by the City Engineer and not

by the Registration Committee. In my opinion, the aforesaid submissions is also without any merit. The City Engineer is ex-officio Secretary of the Registration Committee. He has considered the case of the petitioner. He has given a detailed reasoning in holding that the petitioner is guilty by his order dated 8.6.2005. The said recommendation/order was placed before the Registration Committee only to consider the recommendation whether in this particular case it is a fit case for reduction in the period of deregistration of the contractor. The Registration Committee has found that it is not so and, therefore, has rejected the said recommendation and confirmed the earlier order passed by the Corporation. In my opinion, in the aforesaid circumstances, the principles of natural justice have been complied with and the petitioner has been given full hearing by the Corporation before passing the final order.

7. The last submission advanced by the learned counsel for the petitioner is that the period of three years deregistration is large enough to affect the business of the petitioner. In my opinion, in writ jurisdiction under Article 226 of the Constitution of India it is not permissible for me to determine what should be the period of deregistration. It depends on the facts of each

case. The period of de-registration is a matter of decision of the Corporation. I do not find any perversity in a decision to de-register a contract for a period of three years. In my opinion no case is made out for interference with the discretionary order passed by the Corporation under Article 226 of the Constitution of India. Accordingly, the petition fails and the same is dismissed. No order as to costs. Stay already granted to continue for a period of four weeks.